

1 JOSEPH P. RUSSONIELLO (CSBN 44332)
 2 United States Attorney
 2 JOANN M. SWANSON (CSBN 88143)
 3 Chief, Civil Division
 3 JENNIFER S WANG (CSBN 233155)
 4 Assistant United States Attorney

4 450 Golden Gate Avenue, Box 36055
 5 San Francisco, California 94102-3495
 6 Telephone: (415) 436-6967
 6 Facsimile: (415) 436-6748
 7 jennifer.s.wang@usdoj.gov

7 Attorneys for Defendant

9
 10 UNITED STATES DISTRICT COURT
 11 NORTHERN DISTRICT OF CALIFORNIA
 12 SAN FRANCISCO DIVISION

13 JEFFREY W. TAM,) No. 07-2747 SI
 14 Plaintiff,)
 15 v.) **DECLARATION OF BALVINDER
 16 JOHN E. POTTER,) CHADHA IN SUPPORT OF
 17 Defendant.) DEFENDANT'S MOTION FOR
 18) SUMMARY JUDGMENT**

I, Balvinder Chadha, declare as follows:

19 1. I am over 18 years of age, am a resident of the State of California, and make this
 20 declaration in support of defendant's motion for summary judgment. The statements contained
 21 in this declaration are within my personal knowledge.

22 2. Currently, I am the Manager of Postal Vehicle Service ("PVS") Operations (also
 23 known as Motor Vehicle Craft Unit) for the United States Postal Service ("Postal Service")
 24 Processing & Distribution Center ("P&DC") in Oakland, California ("Oakland P&DC"). I was
 25 permanently assigned to my position as Manager of PVS in 2004. In 2002 and 2003, I served
 26 as the Acting Manager of PVS. The PVS Operations is part of the Transportation Networks
 27 Division ("Transportation") at the Oakland P&DC, and I report to Keith Inouye, Manager of
 28

1 Transportation at the Oakland P&DC. I am responsible for oversight of all postal vehicle
2 operations and supervise drivers and bulk mail assistants at the Oakland P&DC.

3 3. Bulk mail assistants annually “bid” for available positions. The Postal Service’s
4 Personnel Office administers the annual bidding process. I am primarily responsible for
5 creating the work schedule for bulk mail assistants at the Oakland P&DC. Generally, bulk mail
6 assistants work one of three “tours” or shifts. Every year, prior to the annual bidding process, I
7 work with my staff, the Mail Processing unit and the Postmasters and managers of post offices
8 in the Oakland service area to determine what bulk mail assistant positions (also known as
9 “bids”), will be necessary to efficiently and effectively carry out the operations of
10 Transportation. As part of this process, I determine the reporting times and days for the bulk
11 mail positions that will be offered during annual bidding. I create a schedule of bulk mail
12 assistant positions based on the operational needs of Transportation. The primarily goal of
13 Transportation is the timely pick-up and delivery of mail. Accordingly, the bulk mail assistant
14 schedule and positions reflect business judgments regarding how to best ensure sufficient
15 coverage for all tours and to minimize the need to incur overtime costs. Positions are not
16 tailored for any individual assistant. In developing the positions that will be offered during the
17 annual bidding process, I do not consider which individual assistant is likely to obtain a
18 particular position. Before the positions are submitted to Personnel for annual bidding, Mr.
19 Inouye reviews the positions and schedules creates. Once the positions have been determined,
20 employees then bid for the available positions for the coming year. Priority in the bidding
21 process is based on seniority.

22 4. Most bulk mail assistant positions cover one tour. To meet the operational needs of
23 Transportation, the bulk mail assistant schedule must include a relief position. The bulk mail
24 assistant with this position relieves assistants on the other three tours – e.g., allows for full
25 coverage of a particular tour during another assistant’s scheduled day off – and thus, has
26 varying start times during the week, and at times, non-consecutive days off. During my tenure
27 as a the Manager of PVS, plaintiff, Jeffrey Tam, had the least seniority of all the bulk mail

1 assistants. Accordingly, Mr. Tam took whatever bid remained after the other bulk mail
2 assistants made their selections and received the last vacant position – the relief bulk mail
3 assistant position. A true and correct copy of the schedules for bulk mail assistants from 1999
4 to 2005 is attached as Exhibit A.

5 5. From 1999 to 2002, the bulk mail assistant positions and schedule remained
6 unchanged. In December 2002, the reporting times and days for the bulk mail assistant
7 positions for 2003 were restructured to allow for additional coverage during the Postal
8 Service's busiest times, from 4:00 a.m. to 1:00 p.m. from Monday through Wednesday. In
9 December 2004, the reporting time and days for bulk mail assistant positions for 2005 were
10 restructured to create more overlap in the reporting times of the three tours. All of the positions
11 were restructured in order to reduce the need to require an assistant to work over his or her
12 scheduled hours, and thus, minimize overtime costs. I have never based my decision to
13 restructure the bulk mail assistant positions on Mr. Tam's age, race, national origin, or EEO
14 activity.

15 6. In July 2004, I had informed all supervisors and bulk mail assistants that
16 management must receive minimum of two weeks notice to review a request for annual leave,
17 except in unforeseen circumstances. A true and correct copy of the July 2004 notice is attached
18 as Exhibit B. Around January 27, 2005, I learned from Mr. Tam's acting supervisor, Debbie
19 Nails, that Mr. Tam had asked to take annual leave from February 9-11, 2005. I informed Ms.
20 Nails that the request could not be approved because Mr. Tam was the only bulk mail assistant
21 scheduled to work his tour on February 9-11, 2005. The other clerk scheduled for the same tour
22 on February 9-11, 2005, Woodrow Staten, had already requested annual leave.

23 7. On February 12, 2005, Mr. Staten, who had been on annual leave from February 5-11,
24 2005, was scheduled to work, but called in on February 12, 2005 to request an additional day of
25 leave because flight delays prevented his timely return from vacation. Mr. Tam was not
26 scheduled to work on February 12, 2005. I determined that Mr. Staten's absence could be
27 sufficiently filled by calling in a clerk, who was already scheduled to come in to work on
28

1 February 12, 2005, to begin his shift four hours earlier. Accordingly, I determined that it would
2 not be necessary to call Mr. Tam in from home to work Mr. Staten's full eight hour shift. This
3 decision reflected a business decision to reduce costs by incurring only four, rather than eight
4 hours of overtime costs. I have never refused to allow Mr. Tam to work overtime on the basis
5 of his age, race, national origin, or EEO activity. The Postal Service does not require
6 supervisors to call in employees to report to work overtime on their scheduled days off.
7 Around July 25, 2003, I emailed all transportation supervisors a clarification of the Postal
8 Service's overtime policy. A true and correct copy of my July 2003 email is attached as Exhibit
9 C.

10 8. Around February 2005, Mr. Tam submitted a request for reassignment to a driving
11 position as a part-time flexible MVO to me. Around October 15, 2003, the Postal Service had
12 instituted a new website – eReassign – to process requests for voluntary reassignments. A true
13 and correct copy of the notice regarding the eReassign website is attached as Exhibit D. Mr.
14 Tam was informed that, consistent with the Postal Service's new policy, he had to apply for his
15 reassignment via the eReassign website. Mr. Tam received reassignment to a part-time
16 flexible MVO position around September 17, 2005. In March 2006, Mr. Tam obtained a
17 position as a full-time TTO, and currently works in that position.
18

19 9. I learned from transportation supervisor Gloria Benavides that Mr. Tam, without
20 authorization, began his shift 1.5 hours early to work overtime on or around June 26, 2005.
21 Although Ms. Benavides had disallowed Mr. Tam's overtime, I instructed her to pay Mr. Tam
22 for the overtime hours. I have never disallowed any overtime earned by Mr. Tam based on his
23 age, race, national origin, or EEO activity.

24 I declare under penalty of perjury under the laws of the United States of America that
25 the foregoing is true and correct.

26 Executed on May 23, 2008 at Oakland, California.

27 _____ /s/
28

Balvinder Chadha